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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,466	03/01/2004	Stephen P. Dulac	PD-20/2097	9945
7590 01/28/2009 Hughes Electronics Corporation Patent Docket Administration Bldg. 001, M/S A109 PO Box 956 El Segundo, CA 90245-0956				
EXAMINER LOUTE, OSCAR A				
ART UNIT 2436		PAPER NUMBER		
MAIL DATE 01/28/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/790,466	Applicant(s) DULAC, STEPHEN P.
Examiner OSCAR A. LOUIE	Art Unit 2436

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 01/23/2009
13. ☐ Other: _____.

/Nasser G Moazzami/
Supervisory Patent Examiner, Art Unit 2436

Continuation of 11, does NOT place the application in condition for allowance because:

- The applicant's arguments with respect to "delivering a first unencrypted portion of at least on video program available for viewing on demand," have been carefully considered but is non-persuasive because it would be obvious to one of ordinary skill in the art to understand "interactive television" as "video on demand" since the purchase of video content would be for additional video content, not that there is no point since the content has already been viewed, but that additional content is purchased; the content would include video content since it is "television";
- The examiner also notes that in addition to taking interpretations based on the applicant's Specification, the examiner must take into consideration that which would be reasonable to expect one of ordinary skill in the art to understand and find as obvious at the time of the applicant's invention;
- The examiner's explanation with respect to the genus and species was to show that although typically a genus cannot be used to show a species, there are exceptions where it can be, such as in this case where "interactive video" and "video on demand" are obvious;
- The applicant's arguments with respect to the "purchasing" of video content have been carefully considered but is non-persuasive, because it is obvious to one of ordinary skill in the art that video content is included as a purchasable since it is viewed on a "television"; the examiner's previous explanation with respect to there being no limits was meant to clarify that a plurality of types of content are purchasable through the "interactive television" whether explicitly taught by the prior art or suggested, but at the very least video and audio content would be obvious considering the interactive medium is "television";
- The examiner did not intend to utilize the "inherency doctrine" but did intend to utilize obviousness in view of the prior art and what is reasonable to expect one of ordinary skill in the art at the time of the applicant's invention to understand and find obvious;
- The applicant's arguments with respect to "storage" have been carefully considered but are non-persuasive because it is reasonable to interpret the claim language as storage in some type of set top box similar to a "DVR";
- The applicant's arguments with respect to "switching" have been carefully considered but are non-persuasive because the current claim language is broad enough to encompass the teachings of the prior art, perhaps clarification is needed to distinguish the claims as argued "...the user starts by playing the program locally non-batched and switches to what might be analyzed as a batched video stream...";
- The applicant's arguments with respect to, "authorizing capture and decryption of a remaining portion of the video program," have been carefully considered but are non-persuasive because the prior art suggests authentication utilizing keys which is reasonable to expect one of ordinary skill in the art to understand as a form of access control;
- The applicant's arguments with respect to, "splicing," have been carefully considered but are non-persuasive because the current claim language is broad enough to be read by the prior art since the prior art does suggest split content portions which must be rejoined to form the complete content;
- The applicant's arguments with respect to, "retrieving the first unencrypted portion from storage while retrieving the remaining portion of the program on the digital video recorder," have been carefully considered but are non-persuasive because the prior art suggests VCR-like playback where it is reasonable to expect some content to be buffered and the rest taken from either a more permanent storage or another buffer;